APPENDIX

APPENDIX A

No. 19400

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JAMES LEE HILGENECK,

Defendant-Appellant.

Appeal from United States District Court
for the Eastern District of Michigan, Southern Division.

Decided November 7, 1969.

Before WEICK and MCCREE, *Circuit Judges*, and BROWN,* *District Judge.*

PER CURIAM. This appeal is from a judgment of conviction entered upon a verdict of guilty for violation of the Universal Military and Training Service Act[1] by failing to comply with an order of the Local Board to report for civilian work at the University Hospital Center, Ann Arbor, Michigan.

In his questionnaire, appellant claimed that he should be classified in the following order, either as a Jehovah's Wit-

* Honorable Bailey Brown, Chief Judge, United States District Court for the Western District of Tennessee, sitting by designation.

[1] 50 U.S.C. § 462 Appendix.

ness Minister, an agricultural worker, or a conscientious objector. His Local Board classified him as I-O (conscientious objector).

In our opinion there was basis for this classification. This is all that the law requires. *United States* v. *Mulloy,* 412 F.2d 421 (6th Cir. 1969). We find no error in the Court's instructions to the jury.

Appellant had a personal appearance before the Board. He did not appeal his classification. Later the State Selective Service Headquarters requested the Board to allow appellant to appeal, which he did, and the Appeals Board classified him I-O. We do not construe the request as one to reopen the classification. We find no failure on the part of the Board to accord to appellant his procedural rights.

We regard the summary of the meeting of the Local Board, held on April 27, 1966, as a substantial compliance with Selective Service Regulation 1666.20(c) and as authorization to the Clerk to issue the order to report for civilian work. *United States* v. *Boroski,* 412 F.2d 668 (6th Cir. 1969).

Other claims of appellant have been considered and are deemed to be without merit.

The sentence of five years' imprisonment would seem to us to be rather severe. We do not have before us the presentence report which may have justified the sentence. The District Court, however, will have the opportunity to consider reduction of the sentence if request is made under Rule 35 of the Federal Rules of Criminal Procedure. *United States* v. *Mulloy, supra.*

District Judge Brown did not join in the preceding paragraph.

Affirmed.

APPENDIX B

INDICTMENT
(Filed April 3, 1967)

THE GRAND JURY CHARGES:

That on or about August 23, 1966, in the Eastern District of Michigan, Southern Division, JAMES LEE HILGENECK, defendant herein, did wilfully and knowingly fail and neglect to perform a duty required of him under and in the execution of the Universal Military Training and Service Act and the rules, regulations and directions duly made pursuant thereto, in that he did fail and neglect to comply with an order of his local board to report to said board for instructions to proceed to University Hospital and Medical Center, Ann Arbor, Michigan to report there for employment pursuant to said instructions and to remain in such employment for twenty-four (24) consecutive months or until such time as released or transferred by proper authority; in violation of Section 462, Title 50 Appendix, United States Code.

This is a True Bill,

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FOREMAN

LAWRENCE GUBOW
United States Attorney
/s/ Joel M. Shere
JOEL M. SHERE
Assistant United States Attorney
Dated: .....

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Sixth Circuit

No. 19400

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JAMES LEE HILGENECK,

Defendant-Appellant.

BEFORE: WEICK, McCREE, Circuit Judges and BROWN, District Judge.

JUDGMENT

APPEAL from the United States District Court for the Eastern District of Michigan

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

No costs awarded. Rule 39(b).

Entered by order of the Court.

Carl W. Reuss

Clerk